IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Habeas Corpus Petition No. 06 OF 2007

1. Sarvajeet Singh S/o Gurmej Singh
2. Smt. Gyan Kaur W/o Sri Sarvajeet Singh

Both R/o Village Ittava, P.S. Bazpur, Distt. U.S. Nagar

.....Petitioners

Versus

State of Uttarakhand **and nine others**

.....Respondents

Dated: 26.07.2007

Sri S.K. Mangal, learned counsel for the petitioners
Sri Harish Pujari, learned Addl. G.A. for the State/Respondent Nos. 1 to 3
Sri G.S. Lakhchaura, learned counsel for Respondent Nos. 4 to 10

Hon'ble Dharam Veer, J.

By means of this petition, the petitioners have prayed to command the respondents to produce petitioner No.2 before this Court in well sound position and be handed over in to petitioner no.1 and further to direct the respondent Nos.1 to 3 to give necessary protection to the petitioners for living their peaceful matrimonial life.

2. Briefly stated, facts of the case as stated by the petitioners are that petitioner no.2 is a major being 20 years of age and on 14.5.2007, both the petitioner got married and started living as husband and wife at Moradabad with their will. It has been alleged that Respondent Nos.4 to 10 forcibly took away petitioner No.2 from the custody of petitioner no.1 on 27.5.2007 from Bazpur and till then petitioner No.2 is in illegal custody of respondent Nos.4 to 10. The petitioner made complaint to Respondent No.3-S.H.O., Bazpur, however no action was taken. It has also been stated that respondent nos.4 to 10 were not happy with the marriage of the petitioners and they are going to get married petitioner no.2 with some other person against her will. On 11.6.2007, petitioner no.1 made an application to respondent no.2 and 3 and S.D.M. Bazpur through registered post stating all the facts. On 3.4.2007, S.D.M.

Bazpur recorded the statement of petitioner no.2 and she had stated that she did not want to live with her parents and wanted to marry with petitioner no.2, as she was major. On 17.4.2007, S.D.M., Bazpur again recorded the statement petitioner No.2. Thereafter, petitioner No.2 filed a petition u/s 482 of Cr.P.C. being No.332 of 2007 before this Court and in pursuance of order of this Court, the petitioner No.2 was released from Nari Niketan, Haldwani and got married on 14.5.2007 according to Sikh rites. It has also been stated that the respondents No.4 to 10 have illegally detained petitioner no.2 and since she has been married with petitioner no.2, hence respondents no.4 to 10 are not entitled to forcibly detained her. Being aggrieved, the petitioners have filed the present petition.

3. A counter affidavit has been filed on behalf of respondent nos.4 to 10 in which it has been stated that the date of birth of petitioner no.2 is 12.5.1989 as per the school leaving certificate and as such on the date of filing of writ petition, her age was 18 years and 2 months and 1 day. It has also been stated that in order to prove the marriage, there must be a certificate of marriage issued by any competent court of law and merely a photograph is not sufficient to show that petitioner no.1 got married with the petitioner no.2 and moreover the date of marriage i.e. 14.5.2007 has been shown only because on that particular date, the petitioner no.2 has completed her 18 years of age. It has been further stated that respondent nos.4 to 10 did not take away petitioner no.2 forcibly but she was given in the custody of her father and mother on 26.5.2007 with her own will in compliance of order of Panchayat dated 22.5.2007. On 26.5.2007, when the petitioner no.2 was given in the custody of her parents with her will, so many relatives of petitioners were present and in this regard, a

Supurdginama was written between the parties which clearly shows that the girl was given in the custody of her parents with her own will in the present of Panchayat.

4. I have heard Sri S.K. Mandal, learned counsel for the petitioners, Sri Harish Pujari, learned Addl. G.A. for the State/Respondent Nos.1 to 3 and Sri G.S. Lakhchaura, learned counsel for Respondent Nos.4 to 10.

5. On 18.7.2007, this Court has directed to Gyan Kaur, Petitioner No.2 to file her personal affidavit within a week. In compliance of that order, Petitioner No.2 Gyan Kaur has filed her affidavit in which it has been stated that she is a major citizen and her date of birth is 12.5.1989 and as such on 14.5.2007, she has attained the age of 18 years and has become major. It is also stated that she never married with petitioner No.1 as stated in the writ petition. She is living happily and peacefully with her parents at Village Ittava, P.S. Bazpur, Distt. U.S. Nagar with her own sweet will and without any fear and pressure of anybody. It is also stated that she is not in the illegal custody of her parents and she wants to live with her parents. It has further been stated that she never authorized petitioner No.1 to file writ petition on her behalf before this Court.

6. In view of the personal affidavit filed by Petitioner No.2 Gyan Kaur, it has become ample clear that she is not in the illegal custody of her parents and she is living with her parents peacefully and happily and without any fear and pressure of anybody. Hence, now there is no question to produce the Petitioner No.2 to be given in the custody of petitioner No.1.

7. For the reasons recorded above, the habeas corpus petition is dismissed. No order as to costs.

(Dharam Veer, J.)

Rajeev Dang